

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

CC: 96-45

In the Matter of	)	
Petition for Waiver Filed by	)	CC Docket No. 96-45
	)	
Cass County Telephone Company	)	AAD 95-62
	)	<b>RECEIVED</b>
Concerning the Definition of "Study Area" Contained in the	)	
Part 36 Appendix-Glossary of the Commission's Rules	)	NOV 22 1999

To: Chief, Common Carrier Bureau

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REQUEST FOR REMOVAL OF WAIVER CONDITION  
CONSISTENT WITH COMMISSION POLICY**

Cass County Telephone Company ("Cass") submits this request for the removal of the "cap" on the Universal Service Fund ("USF") cost allocation support payments established by the Commission's Order adopted January 16, 1996, with respect to Cass's study area.<sup>1</sup> The Order authorized the transfer of local exchange facilities consisting of six exchanges serving 5,719 access lines into Cass's newly-created study area. As a condition to the grant of study area waiver, the Order imposed a limitation or "cap" on USF disbursements to the Cass study area of \$1,626,277 per annum. Consistent with the overarching Commission policy conclusions now established by the Memorandum Opinion and Order on Reconsideration, released September 9, 1999,<sup>2</sup> Cass requests that its individual USF cap be removed as of January 1, 2000.<sup>3</sup>

<sup>1</sup> Memorandum Opinion and Order, AAD 95-62, 11 FCC Rcd 1815 (1996) ("Order").

<sup>2</sup> Memorandum Opinion and Order on Reconsideration, AAD 93-93, 95-72, 95-30, 97-21, 97-23, 97-117, 98-44, 98-53, DA 99-1845, released September 9, 1999 ("Cap Removal Order").

<sup>3</sup> Although this Request references an effective date of January 1, 2000, Cass does not waive its right to raise issues in the future with respect to the applicability of the Commission's policy or rules to prior periods beginning May 8, 1997.

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Cass expects that many other similarly-situated companies will be seeking removal of their individual USF caps consistent with the Bureau's newly articulated policy conclusions. In order to avoid the administrative burden of repeatedly applying its new policy to a multitude of almost identical requests, Cass respectfully suggests that the Commission simply clarify, on its own motion, its policy by lifting the 57 remaining USF caps.

In the absence of this clarification, Cass respectfully requests expedited action in light of the consistency of this request with the recent policy conclusions and to accommodate the completion of the USF administration prior to January 1, 2000. In support thereof, Cass submits the following:

**I. Background**

On April 21, 1995, Cass and GTE (together with two other Missouri companies) filed a joint petition for waiver of the frozen study area boundaries. On January 17, 1996, the FCC released its Order authorizing the removal of exchanges from the GTE Missouri study area and allowing Cass and the other two companies to consolidate their acquired exchanges within their respective Missouri study areas. Cass was authorized to transfer six exchanges serving 5,719 access lines into a newly-created study area subject to the condition that, absent explicit approval from the Bureau, the annual USF support provided to the existing study area would not exceed the estimated post-upgrade amount of \$1,626,277, specified in the joint petition.<sup>4</sup> The National Exchange Carrier Association ("NECA") was ordered not to distribute USF payments exceeding the limitation.

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<sup>4</sup> Order at ¶ 7, n.24.

Although Cass was aware in 1996 that the facilities to be purchased were substandard, and that the Bureau would likely impose a limit on USF recovery, Cass, nevertheless, fully expected that a rational network cost recovery application would be ultimately resolved consistent with the public interest.<sup>5</sup> Cass believed that rational cost recovery would be possible by removal of the limit or the implementation of a new USF plan, under which the reasonable high costs would be addressed. Although the Cass study area's Year 2000 USF receipts, based on data forwarded from the Universal Service Administrative Corporation ("USAC") to the Commission on October 1, 1999, would likely be less than the \$1,626,277 cap imposed in the Order, grant of this request will allow Cass to proceed in coming months and years with network upgrades with the understanding that the costs incurred in providing advanced services in rural Missouri will be addressed by USF cost recovery.

## **II. Removal of Cass's Cap is Consistent with Established Commission Policy**

On September 9, 1999, the Commission issued its Cap Removal Order, addressing petitions for waiver and reconsideration of the USF conditions applied to 32 study areas. While the Commission noted its policy of monitoring USF impact on carriers involved in study area changes and capping carriers at some estimate of post-upgrade costs, the Commission correctly concluded that limiting the duration of those caps is appropriate and in the public interest.<sup>6</sup>

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<sup>5</sup> Since the acquisition in 1996, Cass has replaced six (6) switches, constructed 1,200 miles of new cable, serving 2,800 additional customers. Cass has invested approximately \$8.9 million in its plant throughout the study area over the past three years.

<sup>6</sup> Cap Removal Order at ¶ 9.

Accordingly, the Commission granted petitioners' requests to lift the individual caps placed on their high cost loop support on a going-forward basis.<sup>7</sup> As of January 1, 2000, the high cost loop support for the 32 study areas will then be based upon the average cost of all their lines.

The Commission acknowledged that "caps of unlimited duration may hinder petitioners' incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers."<sup>8</sup> The Commission also determined that "limiting the petitioners to the high cost loop support estimated in their original petitions, in perpetuity, is not necessary to accomplish the [Commission's] policies . . ." The Commission "concluded that . . . the individual caps placed on the carriers' high cost loop support have served their purpose . . ."<sup>9</sup> The Commission also recognized correctly that lifting the caps on petitioners' high cost support will increase the affected LECs' incentives and ability to extend service to previously unserved areas and upgrade their networks."<sup>10</sup>

Cass's conditions are effectively identical to those petitioners addressed in the Cap Removal Order. Therefore, removal of Cass's individual USF cap is both warranted by, and consistent with, the Commission's conclusions and policy enunciated in the Cap Removal Order.

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<sup>7</sup> Cap Removal Order at ¶ 10.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Cap Removal Order at ¶ 10. See also Federal-State Joint Board on Universal Service: Promoting Development and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 99-204 (rel. Sept. 3, 1999).

Like the petitioners addressed in that order, Cass purchased exchanges several years ago and, in conjunction with its request for study area waiver, provided a reasonable estimate of the costs to upgrade the subject facilities for the provision of basic telephone service to existing and new customers. Continuing to limit Cass to the high cost loop support estimated in its original petition is not necessary to accomplish the Commission's policies. Further, continued application of the individual cap imposed in January 1996 will hinder Cass's incentive to continue to invest in advanced services networks and to upgrade existing service, and would jeopardize Cass's ability to maintain reasonably comparable rates for modern services.

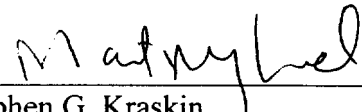
### **III. Conclusion**

Consistent with the Commission's policy established in its Cap Removal Order, Cass requests that the individual USF cap established by the Commission's Order be removed as of January 1, 2000. Cass requests that the Commission lift the individual cap placed on its high cost loop support on a going-forward basis so that, as of January 1, 2000, Cass's high cost loop support payments will be based upon the average cost of all its lines. Adequate USF funding is necessary to allow Cass to continue to maintain and upgrade its facilities for the provision of universal service to its rural Missouri study area. Expedited grant of this request will serve the

public interest by ensuring that Cass receives adequate universal service funding to recover the costs of its investment and thereby meet its current and future service requirements.

Respectfully submitted,

Cass County Telephone Company

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November 17, 1999

## **CERTIFICATE OF SERVICE**

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Request for Removal of Waiver Condition Consistent with Commission Policy" of Cass County Telephone Company served on this 17th day of November, 1999 by hand delivery to the following parties:

  
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